THE

Madras Weekly Notes.

1911] Sunday, September 24, 1911 [1911

THE MARRIED WOMEN'S PROPERTY ACT AND LIFE INSURANCE.

In the *Oriental Government Security Life Insurance Company* versus *Vantedu Amiraju and others* reported in [1911] 1 M.W.N. 276, their Lordships of the High Court observing that the Married Women's Property Act was not applicable to Hindus, held independently of the Act that the policy-money though insured for the benefit of the wife and children was still the property of the deceased at his death and would as such descend to his heirs only. As the point is one of general intent and great importance seeing that many a Hindu in this country has insured his life for the benefit of his wife and children in the belief that the amount assured will be their property and be a provision for them after his death, I beg leave to discuss the point so as to see how far the statement of their Lordships that the Act does not apply to Hindus is correct. It appears from the report of the case in the Weekly Notes and from the Judgment of the High Court that the point was not fully and seriously argued. The judgment shows that in the High Court the appellant admitted plaintiffs' title to recover the whole policy-amount and only disputed the liability to pay interest from the date of the refusal to recognise the succession certificate to the date of deposit in Court.

The Married Women's Property Act is Act III of 1874. It is a short one consisting of 9 sections, of which Sec. 3 has been repealed. The objects of the enactment are as stated in its preamble threefold, which are distinct :—(1) to make certain provisions regarding the wages of women married before 1st January 1866; (2) to make certain provisions for insurances on lives by married persons ; and (3) to protect the husbands of women to whose marriages the Indian Succession Act applies from liabilities for their wives' ante-nuptial debts and to provide for the enforcement of claims by and against such wives. Sections 1 and 2 as well as 3 since repealed are preliminary, Sec. 4 gives the provisions relating to object (1), sections 5 and 6 relate to object (2) and sections 7 to 9 relate to object (3).

Section 1 gives the Short Title of the Act, which is somewhat misleading in that the Act contains certain provisions relating to men also, such as insurance on their lives. The Act is rightly described in the heading as "An Act to explain and amend the law relating to certain married women and for certain other purposes." But the Short Title is not suggestive of 'the other purposes' and is not therefore to be considered in determining the scope and extent of the Act. Its scope and extent are defined in section 2. The first para

of that section says that 'the Act extends to the whole of British India and so far as regards subjects of Her Majesty to the dominions of Princes and States of India in alliance with Her Majesty.' This would extend the provisions relating to objects (1) and (2) to all classes of Her Majesty's subjects of any religion, of any race, sect or ribe, and the provisions relating to object (3) to all classes to whom the Indian Succession Act applies. But the following paras of the section proceed to impose certain limitations. The second para says that nothing in the Act would apply to a married woman of any of the five specific religions, and the last para adds Sikhs and Jains also to the classes excluded from the Indian Succession Act; while the intervening paras empower the Governor General in Council to further exclude any race, sect or tribe from the operation of all or any of the provisions of the Act and revoke such exclusion. The net result then of all these paras is as follows:—The provisions relating to object (1) which solely concerns women are limited in their application only to those married women who are not Hindus, Mahammadans, Buddhists, Sikhs or Jains; those relating to object (2) are, so far as women are concerned, the same but unlimited so far as men are concerned; and in the case of object (3) which is in its very conception limited providing only some provisions supplementary to the Indian Succession Act, Sikhs and Jains also are excluded from section 4 of that Act; the Governor General in Council being further given the power to exclude the members of any community now coming under the Act from the operation of all or any of its provisions at any time and remove such exclusion.

Now we are concerned with object (2). It must be conceded that the word 'persons' used in the preamble with reference to this object includes, say, Hindus also among others. In fact the very exclusion of certain classes or races in section 2 presupposes their inclusion by the language of the previous portion of the Act. Such being the case, and the exclusion in Section 2 being only about women, where then is any provision in the Act to say that the Act does not apply to married men of Hindu and the other religions? The only section in the Act about which this question arises is section 6. By the force of this exception about women in section 2, we are to read "Not being a Hindu, Mahammadan, Buddhist, Sikh or Jain" or words to that effect after the words "married women" in sections 4, 5 &c. But where is there any warrant for the importation of such words also after "married man" in section 6? If there is none, a policy for the benefit of wife and children which is effected by a Hindu must be governed by that section.

It is said that the "wife" in section 6 being a 'married woman' must be subject to the exception in section 2, and consequently the husband contemplated in section 6 must be one who is not a Hindu, Mahammadan, Buddhist, Sikh or Jain. This reasoning is fallacious. If the preamble and section 6 are as they are comprehensive enough to include the policies effected by the Hindu males also, how does it follow from one class of the beneficiaries, namely the 'wife,' being excluded from the benefit of that section by the exception clause that the other class also—the children—should be taken as excluded, that such policies were not intended to be covered by the section and the Act was never meant for them; that in other

words, the words "not being a Hindu Mahammadan, Buddhist, Sikh or Jain" were intended to be read into the section so as to limit the 'married man' there to the other communities only? It may be said in reply that the Legislature can never be intended to have made a provision a portion of which is rendered nugatory by another provision in the Act, and the provision should therefore be so construed that no part of it fails to take effect. The answer to this argument is that as in the case of the communities to which the provision admittedly applies the whole of it takes effect, the part relating to 'wife,' is not altogether a dead letter which has no meaning at all, and so the fact that in some instances it fails in part owing to the exception affords no justification for the narrow construction which is sought to be placed on it. The Legislature must be taken to have made a general provision subject to partial exceptions. Legislation of this kind is not uncommon. It may be asked why is such a distinction made between wife and children in the case of certain communities while none is so made in the case of others. There is no doubt less reason for the distinction than for excluding the females of those communities from the benefit of section 5 while the males are included in the next section. But we cannot on such considerations import into the Act words which are not there so as to limit its applicability. It would be more sensible to say from the foregoing considerations that the exception about women in para 2 of section 2 was meant to be made in connection with the provisions solely relating to them such as those in sections 4 and 5, and that the 'wife' in section 6 was not meant to fall within the exception.

Another argument advanced in some quarters in support of the view that section 6 does not apply to Hindus, &c., is that if the section would include all males whether Hindu or or other excepted races, the use of the word 'members' in section 2 in connection with 'any race, sect or tribe' which may be exempted by the Governor General would be meaningless and the word 'woman' would be used. I am unable to find any point in this argument. The Act contains provisions relating to males as well as females; and if the power of exemption which is to be vested in the Governor General is to relate to the provisions applying to persons of either sex, a word of common gender like 'Members' is the proper word to be used in the ennobling clause in section 2, whether one of the provisions relating to males, namely section 6, is open to the males of all communities or of some only. The difficulty or absurdity supposed to arise by giving a wider application to section 6 so as to let in the Hindus, &c., with the word 'Members' in section 2 seems to be imaginary; and the argument seems to have originated from some confusion.

There is then no unmistakable indication in the Act to justify the view that section 6 is not applicable to Hindus, &c. The exception in section 2 is only with regard to *women* at whose marriage either party to it is a Hindu or any member of the other excepted races. It cannot follow from this that a similar exception is intended in the case of *men* also. If the Legislature had such intention, the exception clause in section 2 would have been worded differently :—'Nothing herein contained applies to any *person* at whose marriage either party to it professed the Hindu, Mahammadan, Buddhist, Sikh or Jain religion.' The exclusion

of a class by mere conjectural inference from the benefits of an Act which is otherwise comprehensive cannot be justified on any principle of interpretation. On the other hand, the use of the word 'persons' in the preamble and of the word 'woman,' in the excepting clause clearly show that the Legislature *did not intend* to exclude any class of *men* from the operation of the Act in respect of life insurances.

" If my view of the scope of the Act with regard to life insurances is correct, I hope that there will be a very early occasion for the High Court to lay down the correct view so that the effect of the decision already passed may not reach far to the great discomfort of the insurers and their beneficiaries.

J. Gaurinadha Sastri.

THE WEEK'S CASES.

18th September, 1911.

Abdur Rahim, J. and Spencer, J.

C. M. A. 99 and 139 of 1910.

Service of summons ought to be effected as far as possible personally and where it appears that reasonable efforts were made and still such service could not be effected. Service by affixing to the door of the residence is proper service. Where a man resides in British territory and leaves the same temporarily for foreign territory, section 89C.P.C. is not applicable.

C. M. S. A. 3 of 1910.

An appellate court cannot generally alter the decree of the lower court owing to the alteration of law. It has to see whether the decree passed by the first court is correct.

There has been a long course of decisions and practice from 3 Mad. that the sons of a judgment-debtor brought in as legal representatives cannot raise the question of the illegality or immorality of the debt in execution proceedings under the Procedure Code, 1882. [The law on this matter is changed in the new Code.]

19th September, 1911.

Sundara Iyer, J. and Phillips, J.

S. A. 321 of 1910.

In an action for a declaration that the defendant is not entitled to replace a mud dam by a stone dam and for removal and damages, the onus of showing that the substitution of the mud dam by the stone dam does not cause any damage to the plaintiff is on the defendant and the lower court should consider not merely whether any damage actually occurred but whether any damage is likely to be caused by the defendant's action.

20th September, 1911

White, C. J. and Spencer, J.

Appeal 227 of 1905.

A suit was brought on two mortgages, one executed by the mother as guardian and the other executed both by the mother and son who was found to be a minor at the time when the mortgages were executed. There was also at that time a guardian appointed by court over the property of that minor. After the court guardian was discharged, the minor gave a letter to the plaintiff to take an assignment of the mortgage executed by the mother as guardian from a 3rd person in whose favour it had previously been executed.

Held (1) that the mortgage by the mother and son cannot be construed to be a document executed by the mother as guardian of the minor, (2) that a mortgage executed by the minor is void, (3) while there was a guardian appointed by court, no one

else could deal with the property of the minor acting as *de facto* or natural guardian and her acts even though for purposes beneficial to the minor are void and will not bind the minor's estate.

There could be no estoppel in such a case especially when there is evidence to show that the plaintiff knew that the executant was a minor at that time.

Abdur Rahim, J. and Sundara Iyer, J.

S. A. Nos. 525 and 526 of 1910.

(1) In the case of Marumakkathayam families, the properties given by a Nayar husband to his wife and children are held by them as members of a tavazhi. The descendants of daughters are also entitled to the said properties, and the senior male among them is entitled to manage the said properties as karnavan of the said tavazhi.

(2) A demise granted by the *de facto* karnavan for a period of sixty years is held not binding on the tarwad on the ground of absence of necessity or other justifying circumstances, between the parties by reducing the term to the ordinary period of 12 years usual in the case of a Malabar kanom.

(3) A junior member of a Malabar tarwad erecting a building on one of the tarwad lands is not entitled to resist a suit by the karnavan for the demolition of the building and surrender of the land on the ground that he is in the position of a co-tenant and that another co-tenant is not entitled to an injunction under such circumstances against the co-tenant that builds. The karnavan of a Malabar tarwad has an absolute right to possession of all tarwad properties and a junior member of a Malabar tarwad is not in the position of a co-tenant, and consequently the karnavan is entitled to the reliefs prayed for.

Sundara Iyer, J. and Ayling, J.

S. A. 305 of 1910.

An application to set aside a court sale cannot be considered as a notice of the invalidity of the sale to the auction purchaser.

The auction purchaser will be entitled to the value of the improvements effected by him after the filing of the petition but before the sale was set aside.

A thing will be deemed to be done in good faith when it is in fact done honestly whether, it is done negligently or not.

Sundara Iyer, J. and Phillips, J.

C. M. A. 113 of 1910.

An appeal lies from an order of the District Judge that a declaratory decree is executable, being one relating to execution.

The fact that no appeal is preferred from the final order is no bar to the hearing of the appeal against the preliminary order.

S. A. 185 of 1910.

There were four sisters who formed a Marumakkathayam family. The properties were divided into two sets, one set being given to 1 and 3 sisters and the other set to 2 and 4 and their male members. This was entered in a family karar by which the properties allotted to each set was made enjoyable without power of alienation and charged with certain family debts payable by the tarwad. Some members of one set subsequently separated and died issueless. The plaintiffs claimed as the members of the remaining group. It was held in this case that a family karar could not be altered by any member of either group

at his own will but that the same could be altered on equitable grounds in a court of law at the instance of any person or can be revoked by the consent of all the members concerned.

S. A. 444 to 456 of 1910.

Under the Estates Land Act, 'arrear' includes interest also and as such suits for interest also are cognisable only by Revenue Courts.

21st September, 1911.

White, C. J. and Phillips, J.

APPEAL No. 264 of 1909.

A hereditary trustee of a temple was dismissed from office leaving a minor son. During the minority of the son a scheme suit was brought under section 539 of the Civil Procedure Code and certain trustees were appointed. The son after attaining majority brought a suit for enforcing his hereditary right and ousting from office the trustees appointed in the scheme suit. *Held* that the hereditary trustees' only remedy was to bring the suit under section 92 of the new Code for modification of the scheme already settled and that the suit in the present form was not maintainable.

Abdur Rahim, J. and Sundara Iyer, J.

C. M. A. 239 of 1909.

In an application under section 232 Civil Procedure Code by an assignee decree-holder for execution a judgment-debtor pleaded that by virtue of an agreement entered into by him with the assignee decree-holder prior to the assignment, the same was *benami*. The Lower Court held that the plea was not available to him under section 258 Civil Procedure Code. *Rahim, J. held* that the lower court was right as the arrangement amounted to an adjustment. *Sundara Iyer, J. held* that it was not an adjustment and that it could be proved as it would show that the assignee had no title.

L. P. A. 13 of 1911.

The question was as to whether Sec. 7 of the Limitation Act (1908) and S. 8 of the old Limitation Act apply to suits governed by Art. 44 *i. e.* suits by two wards, one of them having attained age more than three years before suit and the other within three years to set aside a sale by their guardian during their minority. *Abdur Rahim, J. held* that the whole suit was barred by limitation as one of the minors had attained majority three years before the suit. *Sundara Iyer, J. held* that so far the second minor was concerned the suit was in time.

Sundara Iyer, J. and Phillips, J.

S. A. 40 of 1910.

Under Section 19 of the Limitation Act interest must be paid as such to save limitation. Section 20 does not include payments by the agent of an agent duly authorised.

REVIEW

The Indian Stamp Act (Act II of 1899) *by T. R. Desai, B.A., L.L.B.—2nd Edition.*

The "Indian Stamp Act" by Mr. Desai is a handy and useful publication. Under each section the relevant decisions are given under appropriate heads. Some important decisions are briefly discussed. Rules relating to the regulation of the formalities and procedure of the Stamp Department have also been given in appendices. Another feature is the lucid summary of the provisions of the Act, in the end. Mr. Desai's handbook would prove useful to the practitioner as a ready reference.